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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/678,032	10/03/2000	Mark B. Lester	1671-0099	5677
7590	06/06/2005			EXAMINER
Paul J. Maginot, Esq. Maginot, Addison & Moore Bank One Center/Tower 111 Monument Circle, Suite 3000 Indianapolis, IN 46204-5130			PRONE, CHRISTOPHER D	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 06/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/678,032

Filing Date: October 03, 2000

Appellant(s): LESTER ET AL.

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Paul J. Maginot  
For Appellant

**EXAMINER'S ANSWER**

MAILED  
JUN 06 2006  
Group 3700

This is in response to the appeal brief filed 2/22/05.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences, which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(8) *ClaimsAppealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

4,123,806	Amstutz et al.	11-1978
5,888,205	Pratt et al	3-1999

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 31, 32, 36-39, and 44 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 08/24/04.

Claims 33-35 and 40-43 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 08/24/04.

**(11) Response to Argument**

In regards to claim 31, applicant argues that Amstutz does not meet the claimed limitation that "the upper rim lies in a second plane P2 that is spaced apart from the first plane P1 by a distance D, wherein D is greater than .5 millimeters and less than 2 millimeters. The examiner has interpreted this to mean that there is an imaginary <sup>that</sup> hemisphere is truly a half of a ball (a precise hemisphere) and the cup is formed of a hemisphere that has had its base trimmed between .5 and 2 millimeters. This trimming causes the cup to form a semi-hemisphere, wherein plane P2 is spaced apart from plane P1 by a distance D. Amstutz discloses a precise hemisphere in figures 1-6, but discloses that the hemisphere may be "a millimeter or two less than hemispherical in

extent" described in column 6 on lines 5-8.. Both the applicant and Amstutz disclose the same invention, but they are just using different wording to describe its structure.

In regards to claim 38, applicant argues that Amstutz does not disclose mismatching the sizes of the cavity and the cup. However claim 38 does not require the mismatching of sizes of the cavity and the cup. Claim 38 requires the semi-hemispherical size of the cup, as address above, but fails to require that the cavity be 1 or 2 millimeters less than the cup.

Applicant argues that claims 32-37 and 39-44 are dependent upon allowable claims. However as described above these claims and the claims they are dependent from are all rejected.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner  
Art Unit 3738

*CP*  
CDP

May 26, 2005

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